

Licensing and Regulatory Committee

Minutes of the remote meeting held on Wednesday 14 October 2020 at 4.30pm, which was broadcast live via the Council's YouTube Channel.

Present: Councillor Heath (Chairman); Councillors Boad, Cullinan, A Dearing, Evans, C Gifford, Grey, Illingworth, Leigh-Hunt, Luckhurst, Mangat, Norris, Redford and Syson.

15. **Apologies and Substitutes**

(a) Apologies were received from Councillor Murphy.

(b) There were no substitutes.

16. **Declarations of Interest**

There were no declarations of interest.

17. **Minutes**

The minutes of the Committee meetings held on 8 July 2020 and 21 September 2020 were taken as read and signed by the Chairman as a correct record, subject to an amendment to the minutes of the 8 July meeting, at page 2, paragraph 3, last sentence, to replace the word "discussed" with "consulted", to read: *"This approach had been informally ~~discussed~~ consulted with Warwickshire Police who supported this inclusion."*

18. **Minutes of Licensing & Regulatory Panels**

The minutes of the Licensing & Regulatory Panels held on 16 July 2020, 18 August 2020 and 22 September 2020 were taken as read and signed by the Chairman as a correct record.

19. **Statement of Licensing Policy Review – Request for Public Consultation**

The Committee considered a report from Health and Community Protection which advised Members of the statutory requirement to review the Statement of Licensing Policy and informed them of the proposed schedule for meeting the Council's legal requirements.

Under the terms of the Licensing Act 2003, the Council's statement of licensing policy had to be reviewed every three years. The current statement of licensing policy came into effect on the 5 January 2018 and a review had to therefore be completed and a revised statement published by 4 January 2021.

Before amending the policy for a further three-year period, licensing authorities were required to carry out a wide consultation process. In addition to those it had to consult by law, the Council had authority to include in the process any individuals or organisations it deemed appropriate.

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The Council responding to the Covid-19 pandemic had impacted on the timelines of the planned review, therefore the proposal was to have minimal changes to the wording of the policy and that the consultation would be conducted on the existing wording of the statement of policy, attached as Appendix 1 to the report.

Officers were working to create a new timeline in order to ensure the correct approvals were received in accordance with Council's Constitution to enable the Statement of Policy to be approved by the appropriate date.

In terms of alternatives, it could be determined that the review of the Statement of Licensing Policy should not take place. However, this was a legal requirement and failing to conduct a public consultation at this time would impact on the Council's ability to have an approved statement in place by the required date.

An addendum circulated at the meeting advised Members that following feedback from the Council's legal advisor, officers wished to amend the consultation period from 15 October - 26 November 2020 to 15 October - 5 November 2020. This was in order to enable Council to consider the recommendation at its meeting on 18 November 2020. As a result, recommendation 2.1 should now read: *That the Licensing and Regulatory Committee supports the proposals to hold a public consultation on the Statement of Licensing Policy between 15th October 2020 and 5th November 2020.*

In addition, shortly before the meeting, a revised Statement of Licensing Policy was circulated to Members and available online. Following consultation with the Council's legal advisor, the draft policy had been revised to remove the references to the Cumulative Impact Zone.

The Licensing Team Leader apologised for the revised appendix being circulated so late in the day and explained this was because of the delay in her receiving the advice from the Council's solicitor.

Councillor Syson was concerned by the removal of the Cumulative Impact Zone from the policy, and that the changes came so late in the day. She asked for clarification on Section 7.2 of the revised appendix, which now stated that "the Licensing Authority has not been presented with sufficient evidence to consider any area within the Borough to currently have a particular concentration of licensed premises causing a cumulative impact on one or more of the licensing objectives. The Licensing Authority will keep this matter under review and accordingly reserves the right, should the need arise, to introduce a special policy concerning cumulative impact during the life of this statement of licensing policy."

In response, the Licensing Team Leader advised that from 2005, the Council had a Cumulative Impact Zone or a Saturation Zone. Unfortunately, the data on which the Council's Cumulative Impact Zone was based was now almost 12 years old. The law required the Council to have robust and relevant data to show there was a need for the Cumulative Impact Zone (CIZ) to be in place. Following legal advice, it was felt that at this moment in time, the Council did not have robust and reliable data to support a CIZ anywhere in the District. As a result, this was removed from the policy and

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if it was determined that one was needed, a separate Cumulative Impact Policy could be generated based on new, relevant, robust data.

In answer to questions from Members, the Licensing Team Leader advised that:

- there was nothing intentional about not mentioning the inclusion of the CIZ in her presentation to Members and the delay in the revised appendix being circulated to Members was due to legal advice having been received late on the evening before the meeting;
- section 7.2 of the appendix would be corrected, to replace the word "borough" with "district";
- back in January 2020, the Licensing Team Leader had approached the relevant department within the Police to ask for supporting information in order to revise the CIZ. She followed up in April and May, but was told they were too busy to provide the Council with the data it needed in order to review the CIZ properly at this time;
- the Licensing Team Leader believed that the number of complaints about antisocial behaviour and violent crime associated with the night time economy in Leamington Spa had significantly reduced when compared with the data used for the current CIZ; there had been a significant reduction in crime across the District;
- the need for a Cumulative Impact Policy had to be justified, given the reduction in crime;
- whilst the process of producing a Cumulative Impact Policy could be started quickly by officers, this had to be underpinned by data provided by the Police, and at this time, they were too busy to give the Council this data;
- the Police had not been told of the revision to the Licensing Policy, to remove the CIZ, because approval was needed from the Committee before going out for consultation on the revised policy;
- the request to the Police had gone through the data handling and statistics departments, but the Licensing Team Leader would make further contact with the Police licensing team;
- the concern of the legal officer was that the CIZ was drawn based on data which was 12 years old, and that a new policy was needed specifically for the CIZ;
- street crime was not something that could be looked at and the data required had to be specifically linked to licensed premises. It was this separation of the data which was difficult and time consuming for the Police to make;
- the antisocial behaviour information recorded by the Council could not be used because it was not linked to premises but rather, it was more to do with green spaces such as parks and disputes between neighbours. These could not be used for the Cumulative Impact Assessment;
- it would be very difficult to defend the refusal of a licence based on data which was 12 years old, hence why the legal advice was to remove the CIZ from the policy and start again;
- the map attached at Appendix 2 of the draft policy prior to its revision had been designed by the Licensing Team Leader back in 2009 and she was almost certain this map was no longer correct;
- the only change to the draft policy as it was initially circulated was to do with the CIZ;

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- paragraph 10.12 would be reviewed by the Licensing Team Leader to in case further changes were needed prior to the public consultation;
- no data from 2020 would be used, be it pre or post lockdown, when there had been exceptional behaviours and reporting whilst the restrictions were in place. The data to be used would be audited, verified data, in the same way in 2009, data from 2007 was being used;
- the current policy could not be extended even for a shorter period of time without going out to consultation;
- the policy could last up to five years, anything less than five years would be at the Council's discretion and the Council could review or amend it sooner than that.

Councillors Redford, Illingworth and Gifford felt that the CIZ was a very useful tool and having it in place was a big reason why there had been a decrease in antisocial behaviour and violent crime in Leamington Spa. As a result, it was important to take the necessary measures to have a new one in place as soon as possible.

At the request of the Committee, the Head of Health and Community Protection agreed to contact the Police and ask that the data required for the review of the CIZ would be provided to the Council as a matter of urgency, given it had initially been requested back in January.

It was proposed by Councillor Illingworth and seconded by Councillor Redford that the recommendation in the report, addendum and revised appendix be approved, subject to the addition of a second recommendation, and an amendment to Appendix 1, page 6, paragraph 7.2, to replace the word "Borough" with "District". The Licensing Team Leader would investigate if any changes were necessary to paragraph 10.12 in the revised appendix.

The Committee therefore

Resolved that

- (1) the proposals to hold a public consultation on the Statement of Licensing Policy between 15 October 2020 and 5 November 2020, be approved; and
- (2) following its removal from the draft Policy, officers are asked to further investigate and bring forward proposals regarding the Cumulative Impact Zone as soon as practically possible.

20. Public Space Protection Orders (Intoxicating Substances)

The Committee considered a report from Health and Community Protection which provided an update as to the public consultation which had taken place in regard to the Public Space Protection Orders (Intoxicating Substances) (PSPO) and made recommendations as to the variation and implementation of a PSPO.

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On 8 July 2020, the Licensing and Regulatory Committee agreed to undertake a public consultation regarding proposals to changes to the existing PSPO which was due to expire on 21 October 2020.

The public consultation in regard to the proposals began on 14 July 2020 and ran until 11 August 2020, the results of which were included at Appendix 1 to the report (response received via the online consultation platform) and Appendix 2 to the report (correspondence as outlined below).

In accordance with the legislation, the following stakeholders were consulted:

- All holders of premises licences within the District;
- All District Councillors, Parish and Town Councils;
- Warwickshire Police;
- Public Notice in the newspaper; and
- Web and social media sharing of the proposals.

It was proposed that the existing Restricted Drinking Zone PSPO should be varied to create an Intoxicating Substances PSPO. This would make it an offence for a person 'without reasonable excuse' to fail to comply with a police officer's or designated officer's request in terms of ingestion, inhalation, injection, smoking or otherwise use of an intoxicating substance if it was believed by that authorised officer that the continuation of the use of those intoxicating substances would lead that person to carry out anti-social behaviour. The proposals were contained in Appendix 3 to the report.

An authorised officer could request that the consumption of substances should be stopped and/ or request for it to be surrendered.

The responses received via the online consultation platform showed that 80.2% were in favour of the introduction of the intoxicating substances zone (91 responses). In addition, correspondence of support had been received from licenced premises and organisations within the District as detailed in Appendix 2 to the report.

The legislation for PSPOs outlined that if orders were varied, extended or discharged, there were statutory requirements regarding publishing or publicising of this and that a consultation process was required.

In terms of alternatives, another option would be to renew the existing PSPO without alteration. However, the public consultation had shown overwhelming support for the proposed changes to the PSPO. This would also prompt a further consultation to allow stakeholders to provide feedback on the proposals. Alternatively, a decision could be taken to removal the existing orders in relation to the current District-wide restricted drinking zone. This would also require consultation with relevant stakeholders. As outlined within the report, the feedback received outlined overwhelming support for the proposed changes.

In answer to questions from Members, the Head of Health and Community Protection advised that:

- this was a public consultation and as a result, not only were stakeholders consulted, but it was also available for the wider public to comment upon;

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- altogether, there were 91 responses on the online platform, and two other responses as detailed at Appendix 2 to the report;
- a definition of the intoxicating substances was provided in the proposed order attached at Appendix 3 to the report, stating: "Intoxicating Substances are defined for the purposes of this order as Alcohol and any other substance which have the ability to suppress and/or depress the bodies central nervous system". It was written in such a way to cover not only illicit substances, but also those who are "legal highs", such as nitrous oxide;

It was proposed by Councillor Boad and seconded by Councillor Redford that the recommendations in the report be approved.

The Committee therefore

Resolved that

- (1) the variances to the existing order district wide restricted drinking zone be agreed in order to create a district wide intoxicating substances zone; and
- (2) the adoption of the PSPO for the next three years, be agreed.

21. Public Space Protection Orders (Dog Controls)

The Committee considered a report from Health and Community Protection which provided an update on the stakeholder consultation which had taken place in regard to the Public Space Protection Orders (Dog Controls) (PSPO) and made recommendations as to the extension of the existing orders.

On 21 September 2020, the Licensing and Regulatory Committee agreed to undertake a consultation regarding the proposal to extend the existing PSPO which was due to expire on the 21 October 2020.

The consultation began on 22 September and ran until 5 October 2020. The results of that consultation were included as Appendix 1 to the report. From the responses received, there were no objections to extending the existing orders.

In accordance with the legislation, the following stakeholders were consulted:

- All District Councillors, Parish and Town Councils.
- Warwickshire Police;
- The Dogs Trust;
- The Kennel Club;
- Guide Dogs;
- The Jockey Club; and
- All other relevant land owners.

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It was proposed that the existing PSPO regarding dog controls were extended for a further three years without alteration. The wording for the existing orders were contained in Appendix 2 to the report.

The PSPOs had a term of three years and as outlined in the previous reports, the legislation for PSPOs outlined that if orders were varied, extended or discharged, there were statutory requirements regarding publishing or publicising of this and that a consultation process was required.

In terms of alternatives, a decision could be taken to remove the existing orders in relation to the current dog controls. This would also require consultation with relevant stakeholders. However, the feedback received outlined overwhelming support for the extension of the existing orders.

The existing consultation could move on to a public consultation following a report to the Committee outlining the proposals for the PSPOs which were reflective of the stakeholder pre-engagement activities. However, as outlined previously, it was not believed that a fair public consultation could be conducted at this time.

In addition to the above, the timeline for such a consultation and report would still require the existing orders to be extended to allow the consolidation of the feedback from the pre-consultation process, a suitable public consultation period and the preparation of reports to Committee regarding the adoption and/ or amendments required to the revised PSPOs.

In answer to questions from Members, the Head of Health and Community Protection advised that:

- a further consultation had not been scheduled at the moment, but the intention was to plan one for later in 2021, to allow sufficient time for those being consulted to understand and review any proposed changes;
- whilst paragraph 4 of the regulation, which did not mention any specific play areas, if these were covered under the previous PSPO, these would remain covered by the new ones;
- whilst the list of children's play areas could be amended in the future, this could not be done at this stage because the consultation had been for an extension of the existing Order; and
- in relation to section 3.3, page 2 in the report, when changes to the PSPO were brought forward later in 2021, a wider consultation could take place, to include a wider range of organisations.

Following consideration of the report, it was proposed by Councillor Boad and seconded by Councillor Illingworth that the recommendations in the report be approved.

The Committee therefore

Resolved that the extension of the existing PSPO relating to Dog Controls for a further three years, be agreed.

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22. Public and Press

Resolved that under Section 100A of the Local Government Act 1972 that the Public and Press be excluded from the meeting for the following item by reason of the likely disclosure of exempt information within paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006.

23. Minutes of Licensing & Regulatory Panels

The confidential minutes of the Licensing & Regulatory Panel held on 2 June 2020 were taken as read and signed by the Chairman as a correct record.

(The meeting ended at 7.39pm)

CHAIRMAN
16 November 2020